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DIVISION OF REVIEW

PRICE CONTROL IN THE COFFEE INDUSTRY

By
Harry S. Kantor

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TRADE PRACTICE STUDIES SECTION
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FOREWORD

This study of price control in the coffee industry was prepared by Mr. Harry S. Kantor, of the Trade Practice Studies Section Mr. Corwin D. Edwards in charge.

The report is based primarily upon price filings and correspondence in the files of The Associated Coffee Industries of America, and upon interviews with members of the association and with certain producers in the industry. From these sources, and to some extent from materials in the NRA files, the report presents a description of the market structure of the industry, the relative status of large and small enterprises, the character of competitive conditions before the code, the strategic significance of the kind of price control adopted, and the extent of the control which was made actually effective. Acknowledgment is made of the contribution by D. P. Fitzgibbons, author of Chapter V, Section c, entitled "The Cost Formula".

At the back of the report will be found a brief statement of the studies undertaken by the Division of Review.

L. C. Marshall
Director, Division of Review

March 11, 1936

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-PRICE CONTROL IN THE COFFEE INDUSTRY-

SUMMARY STATEMENT OF THE PROBLEM. (*)

The provisions prohibiting sale below cost and destructive price cutting, and such other provisions in the Code as were required to administer these restraints on price competition were the essential trade practice features of the code for the coffee industry. The supporting provisions included: (1) the formulation of a cost system prescribing the manner in which cost items were to be computed; (2) the requirement that all members of the industry file their prices and terms of sale; and (3) the prohibition or restriction of trade practices involving indirect price concessions -- such as gifts or loans of equipment, free deals, unearned allowances, etc. These provisions were devised in order to make the knowledge of price as definite as possible and in order to provide a uniform basis of arriving at costs for the purpose of comparing cost and price.

The forbidding of destructive price cutting or sale below cost may be regarded in the coffee industry as the statement of a social aim, namely, the protection of small enterprise. Its realization depended on the precision with which a modal concept of costs was defined for the industry. The success of the definition is obviously related closely to the effectiveness with which it took account of the distribution of the firms in the industry according to size, the functional differentiation in the industry, the co-existence of widely-varying degrees of integration, the nature of the product, the forms taken in its differentiation and the resulting price structure.

The coffee industry is one in which an enormous share of the total business is done by a very small number of firms. Ranked

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(*) This report is based on an analysis of information derived from an inspection of code authority and NRA files relating to the coffee industry, and on the author's discussion of the issues with the former code authority managers and with a few members of the industry. All code authority records hereinafter referred to are located in the office of the Associated Coffee Industries, New York City.

The author acknowledged indebtedness to W. F. Williamson and J. Rosenthal, manager and assistant manager of Associated Coffee Industries of America for the opportunity to go through the files of the industry, for giving him the benefit of their personal experience and knowledge of the industry, and for courtesies extended in the course of this work.

according to volume, the smallest fifty percent of the firms in the industry do about as much coffee business, combined, as the third largest firm. This concentration of business in the large firms had been increasing in the period preceding code formulation, and the code appears to have been intended, in part at least, as a curb on the rate of its increase.

There is a marked diversity in functions performed by coffee roasting companies. According to the code definition, mere roasting of coffee is sufficient to qualify an enterprise for membership in the Industry. Some concerns actually operate on this limited basis: they roast coffee which is delivered to their plants and later called for by the owners, who are ordinarily wholesale grocers or grocery chains. The code, however, covered all distributive functions undertaken by coffee roasters, except retailing. Chain store sales to consumers were not governed by the coffee code; jurisdiction of that code ceased when the coffee was charged out to the wholesale department by the roasting department. Many firms in the industry distribute through jobbers, others sell direct to retailers. Mail order houses distribute their catalogues to retailers. The chain stores and wagon route companies sell to consumers.

Price regulating difficulties, due to wide differences in degree of integration, namely, the problem of evaluating competitive effects of price changes in different stages of the distributive function, were further complicated by the operation of a few mail order houses which distributed their catalogues to retailers over wide areas. In this type of operation, price offers for direct sale were made to many more retailers than the mail order firm capacity could have supplied. The offers, nevertheless, had a strong influence in the price competition of the more truly effective supply-offers. The wide distribution of mail order catalogues cuts across the usual geographic segregations in an industry in which there is a considerable amount of sectional or local business. The catalogue is an effective bargaining weapon in the hands of the retailer. Visiting salesmen or deliverymen are expected to meet the prices offered by the mail order house.

The code permitted price cutting to meet competition, regardless of cost. However, a definition of competition was not provided. (*) Unless price lists specify the services rendered at stated prices, prohibition of sale below cost breaks down quickly under pressure of permission to meet competition. A thoroughgoing price analysis of the coffee industry might be expected to yield a reasonably definitive statement of the differential structure with regard to services rendered and inter-grade competition.

(*) Article VI, Section 18 of the Code for the Coffee Industry, Codes of Fair Competition, Volume VI, page 276.

Without such statement of relationship between prices in the list of a single company and between competing lists, arguments concerning the effect of a price cut at one level in the price structure on prices at other points in the structure tend to be valueless. Price analysis of the industry would be difficult because of the competition of grades and still more so because demand functions would have to be developed for the consumer market, the retailer market, and the jobber market. Each of these three may be expected to show distinct characteristics. Local differences in demand would have to be considered, as well as freight differentials, in a study of areas reached out of each of the three chief ports of entry for green coffee. The stable character of the product and the comparative lack of fluctuation in total demand for it are in themselves factors favorable to the price analyst, but they necessitate an evaluation of the influence of advertising in effecting internal reallocation of total coffee business. However, the code was not formulated upon the basis of such knowledge. The problems of economic analysis remain unsolved with respect to the coffee industry, Evaluation - however tentative - of the industry's functioning under the code is made with that serious lack clearly admitted. It was generally stated in the industry that the price war under way at the time of code-writing was extremely severe and if it had continued unchecked would have been disastrous to a large proportion of the industry's members. The code provisions represent a compromise among factions in the industry with respect to the desirable extent of price restraints and the machinery best fitted for effectuating them. Some arbitrary elements were introduced into the technique whereby the relationship between costs in the industry and the price structure of the product were to be regulated, in order to make the provisions administratively feasible. The belief is widespread in the industry that the operation of the code resulted in a substantial improvement in the condition of a great majority of the units in the industry, particularly the smaller units.

There is very little in the record of the code-writing period that may be taken as representing explicit statements of interest in the several code provisions on the part of various types of enterprise. No information has been assembled dealing with costs, margins and net returns of units differing in size and method of operation, covering both unregulated and code periods. It is, therefore, impossible to present a tabular statement of the interest of each class of enterprise in the coffee industry -- that is, no tables can be presented showing the costs of various kinds of operation and the margins of a sufficiently large number of firms of each type, in which the underlying economic facts responsible for existing oppositions of purpose in code regulation would be evident. Furthermore, material necessary for a careful analysis of the price structure of the industry is not available.

Without such an analysis of costs and prices, "destructive price cutting" remains a vague phrase and "meeting competition" cannot be defined accurately. The effect of code operation on the members of the industry and on its customers cannot be reduced to a simple numerical statement. The following comments consist largely of an analytical presentation. The treatment of opposing interests in the industry and of the effects of code operation is largely inferential, using facts wherever found.

I. THE NATURE AND ORGANIZATION OF THE INDUSTRY

The Coffee Industry of the United States is an importing, processing and distributing industry. The locus of the price controls established in its codes of fair competition did not, however, embrace all the coffee operations of the industry's members. In distribution, retail sales, except those of wagon-route companies, were under the jurisdiction of The Retail Food and Grocery Code Sales by wholesalers who had bought from roasters were governed by the Wholesale Trade Code. There were no price provisions affecting importing. The price of green coffee was not subject to code regulation, but the code did prescribe the manner in which the cost of green coffee was to be computed, members of the industry were required to set a price not less than cost, (except in meeting competition) and to include as cost the Code Authority's bi-weekly estimate of current market prices for the several grades of green coffee.

Green coffee is imported from producing countries, chiefly Brazil and Colombia. New York receives about 50% of the imports, New Orleans 25 to 30%, and San Francisco about 15%. Spot quotations are published daily in trade journals in these three ports of entry, and futures are dealt in on the Sugar and Coffee Exchange in New York. Green coffee is quoted by source and grade. Eight grades are defined by the Exchange - with some price variation permitted within grades - substitutions in grade may be made in filling contracts on the basis of differentials established in the market at the time of delivery.

Current imports are at the rate of approximately 11 million bags (132 pounds per bag) annually, and have been fairly constant on a per capita basis for the last five years. The slight decline apparent in the past few years may not be significant. It may be merely a recession from the peak reached when surplus production in Brazil was being unloaded here, rather than the result of encroachment by competing beverages. A great deal of green coffee used in this country is imported by roasters who maintain resident buyers at source, or who buy at shipping port markets. Some of this coffee enters the spot markets at the three principal receiving ports, either through the sale of overstock or at the decision on the importing roasters to take a profit on the green coffee. Conversely, companies that import a large part of their green coffee frequently enter the spot markets for needed current supplies. Many do all of their buying in the domestic ports from green coffee buyers and smaller firms generally buy from green coffee jobbers. Except for brokerage payments, there is little advantage in favor of any one of these methods of securing green coffee.

It is probable, that the advantages of integration do not include any significant benefits traceable to direct control of the raw material. Large commitments may be made on favorable terms in growing areas, but these are subject to speculative risks during the delivery period, very much as ordinary transactions in futures. Close governmental regulation of the coffee industry in producing countries tends to equalize selling conditions in those countries and in the consuming countries. Official intelligence relating to the statistical position of the crop-production, stocks, shipments en route, etc.,- and the market situation in home and foreign ports is readily

available.

The functions performed by the members of the coffee industry include roasting green coffee and in most cases packaging and distributing the product. The extent to which these functions are undertaken varies widely among enterprises in the industry. A man operating a small coffee, tea and spice retail store, or a grocery, may buy green coffee from a jobber and run a one-half-bag or one-bag capacity roasting machine back of the store. The roasted coffee in such instance is ordinarily sold in paper bags, or slip-top cans, and the volume handled is extremely small. Another type of small enterprise in the coffee industry is the roaster who operates under contract for a wholesaler who delivers green coffee to the roasting plant, picks up the roasted coffee, packs it under his own brand name and sells it to retailers or consumers. These are the lower extremes in size of establishment and simplicity of function. At the other end of the scale is the A. & P., which maintains resident buyers in producing countries, and sells the branded, advertised, finished product over the counter in its own retail stores. In between these extremes are various types of direct and indirect distribution.

In a somewhat separate category might be listed the mail order coffee companies and the wagon-routes. The wagon-routes make deliveries direct to consumers and operate principally in rural districts. They are not an important factor in the industry. The mail order companies sell to retailers, and their method of selling raises problems very different from those of roasters who send salesmen and make deliveries to retail stores. The mail-order companies tended to feature a low-grade coffee at drastically cut prices. They get a small percentage response to their mailed catalogues and order blanks, and they expect to sell the featured coffee with other brands. Their plant would be utterly inadequate to meet the demand if the majority of their correspondents submitted orders, and would probably be bankrupt if all their actual customers bought only the price-leader coffee. Their offer-to-sell was nevertheless a potent bargaining weapon with which retailers could force down prices asked by companies sending salesmen and deliverymen. Action against loss leader selling under the code provision against sale below cost was slow and difficult, and the conditions caused by such sale on the part of a mail-order firm could therefore continue for some time, affecting the whole region covered by the company's mailing list.

The number of establishments showed a sharp upward trend in the period 1904-1931 as indicated by the accompanying table:

TABLE I

COFFEE INDUSTRY: NUMBER OF ESTABLISHMENTS

Year	Number of Establishments
1904	421
1909	607
1914	696
1919	794
1921	712
1923	729
1927	784
1929	928
1931	917

Source: Census of Manufactures, 1929, pp. 109 and 110; 1931, p. 105. Data are for Census classification "Coffee and Spices, Roasting and Grinding": They do not include establishments with annual production valued at less than $5,000 in 1921 and subsequent Census years, for prior Census years data do not include establishments with annual production valued at less than $500. Census classification was abandoned in 1933.

Prepared by
Industry Statistics Unit,
Statistics Section,
Division of Review, NRA

The series was discontinued in 1931. The membership shown by the Code Authority is much larger; this probably does not represent any increase in the number of members in recent years, but merely reflects the fact that the census did not list very small companies. It is to be noted that there was a sharp decline in the number of establishments about the time of the depression of 1921. Similarly the total shown by the census began a decline following 1929. It is probable that the number of establishments decreased considerably during the current depression, in spite of the fact that used equipment can be acquired with extremely small outlay.

Approximately 1200 concerns are embraced in the code definition of the coffee industry. At the top in size are the A. & P., which boasts about 18% of the total imports, Maxwell House (subsidiary of General Foods) and Chase and Sanborn (of Standard Brands), which between them account for about 18% more of the total. The ten largest firms in the industry do nearly 50% of all the coffee roasting, the smallest 600 (50% of the total firms) do about 10%.

Table II represents approximately the current distribution of coffee firms according to volume handled, with figures given separately for those

which specialize in coffee, or coffee, tea and spice, and those which handle other products either as food wholesalers or retailers or food processors.

TABLE II (*)

DISTRIBUTION OF MEMBERS OF THE COFFEE INDUSTRY ACCORDING TO NUMBER OF BAGS ROASTED

Bags of Green Coffee Roasted	Coffee, and Coffee Tea and Spice Companies	Wholesale Grocers Food Processors and Chain Stores	Total
U Under 2500	426	85	511
2500-5000	124	18	142
5000 -	61	13	74
10000 -	32	10	42
15000 -	32	6	38
25000 -	21	2	23
50000 -	11	1	12
75000 -	7	-	7
100000 -	2	2	4
150000 -	1	-	1
200000 -	-	1	1
250000 -	1	-	1
500000 -	-	2	2
1000000 or over	-	1	1
Total	718	141	859

(*) Compiled from 1934 assessment lists of the Code Authority for the Coffee Industry.

In both of the groups there is a considerable concentration of volume in the hands of a few very large firms. It is obvious that the interests of firms in these two groups would not be identical. A clear case of divergent interest is that of large roasters who are also engaged in grocery retailing. Since coffee has been used effectively as a price leader in the grocery trade for some time, the roaster-retailers may be securing benefits derived from the drawing power of price cuts on coffee. Roasters who sell to independent retailers are likely to be affected by pressure of the retailers for lower prices comparable to those at which a chain store may be charging out coffee to its retailing departments.

Table III shows the dollar volume transacted through different methods of distribution. It is apparent from this table that grocers selling through their own retail branches have the largest sales per company of any of the groups classified according to the method of distribution. Differences in method of distribution distinguish the three largest factors of the industry. The A. & P. sells to consumers; Standard Brands to retailers; General Foods distributes chiefly through jobbers.

The Associated Coffee Industries of America, which is the trade association for the industry and acted as Code Authority during the N.R.A. period, includes representatives of all the types of enterprise in the industry. Chain stores, roasters with jobber distribution, wholesale grocers,

TABLE III

COFFEE INDUSTRY

Distribution of Manufacturers' Sales, by Type of Outlet, 1929

Type of Outlet	Value of Sales		Establishments		Establishments Selling Exclusively to Specified Outlets	
	Thousands of Dollars	Per Cent of Total	Number	Per Cent of Total	Number	Per Cent of Total
Total Distributed Sales	441,081	100.0	925	100.0	569	61.5
Sales to Wholesalers	94,944	21.5	282	30.5	85	9.2
Sales to Manufacturers' Own Wholesale Branches	101,108	22.9	149	16.1	71	7.7
Sales to Retailers	161,878	36.7	578	62.5	289	31.2
Sales to Manufacturers' Own Retail Branches	65,484	14.9	78	8.4	39	4.2
Sales to Industrial and Other Large Consumers	13,989	3.2	144	15.6	45	4.9
Sales to Household Consumers	3,678	.8	109	11.8	40	4.3

Source: Bureau of the Census, Distribution of Sales to Manufacturing Plants, 1929, pp. 26,27. Data are for Census classification "Coffee and Spice, Roasting and Grinding." They do not include establishments with annual production valued at less than $5,000.

Prepared by
Industry Statistics Unit
Statistics Section
Division of Review, NRA

roasters selling to retailers and green coffee importers are all represented on the governing committee of the association. At the time of the code hearings the Association had about 350 active members and claimed to represent about 85% of the coffee roasting business.

II. THE DEMAND FOR THE PRODUCT

Techniques suitable to the regulation of prices in an industry on a permanent basis or during a severe depression are shaped in large measure by the nature of the demand for the industry's product. The demand, in turn, is affected by the type of purchasers, the nature of the product, the circumstances of its purchase, and corresponding specification of competing products.

The coffee industry buys green coffee, blends and roasts it, and distributes it to consumers directly or through intermediaries. In sales to consumers, the industry's product is actually a labelled package. Coffee is a relatively stable product. The industry produces a large number of blends. While there may be changes from time to time in the manner in which an indentifiable cup flavor is achieved by blending, with the result that a flavor may be duplicated or nearly duplicated with cheaper coffees, startling innovations in blending or roasting are unlikely. The product has not changed appreciably for many years. New blends may be, and are, introduced on the basis of slight or imaginary differences in taste, and the success of the introduction may be expected to depend largely on the astuteness and intensity of the sales campaign.

Taste and habit might be expected to constitute the basis of consumer demand for coffee. People usually drink coffee with meals, and are therefore not likely to change their consumption of coffee. Price cuts by individual retail outlets are much more likely to cause reallocation of sales volume among outlets in a market area than an increase in the total sales in that area. Demand falls off in the summer months, and efforts to stimulate sales of iced coffee have been few and sporadic. It is difficult to teach the consumer how to make iced coffee in a way that retains the flavor. To sum up, the demand for coffee is highly stable.

Sever competition for volume is to be expected under such conditions. Huge appropriations for advertising are common among the very large companies. Advertisers keep hammering away at the consumer in order to build up a demand for their product. Brand names become extremely important. Concentration of attention on type of container is a natural consequence. Roasted coffee loses its flavor if exposed to air, and loses it more rapidly after grinding than in the whole bean. Merchandising campaigns are based on these facts. Chase and Sanborn advertises dated coffee; Maxwell House spends enormous sums of money telling the consumer that vacuum cans provide perfect protection for the coffee, and the A. & P. grinds its own coffees in the store at the time of sale to the consumer. Dating coffee involves an expensive service in frequent deliveries, and a loss in the sale at lower prices of coffee returned by the retailers at the end of ten days. A vacuum can costs more than 5¢ per pound, as compared with about 2.3¢ for a slip-top can and one cent for a paper bag. (*) Grinding each pound of coffee when it is sold adds considerably to the cost of handling coffee in the retail store. Smaller coffee roasters are forced to follow one or another of these procedures or to allow a price differential determined by the extent to which the intensive advertising campaigns of the large companies have influenced the consumer.

(*) Hearing of Standard Brands before National Conference Board, in N.R.A. files.

The effect of competing beverages on the demand for coffee would be extremely difficult to guage. Soft drinks, beer, tea, cereal drinks, and decaffeinized coffee undoubtedly offer competition. Beer may have the effect of widening the seasonal drop in summer, although the result may not be of noticeable importance. The competitive effect of campaigns against caffein is, of course, more important than actual sales of the substitute offered might indicate, since it may cause consumers to stop drinking coffee without persuading them to take up the decaffeinized product. Acquisition of the most important of these products by a company selling ordinary coffee in recent years may have influenced the form of advertising on caffein, since the sales of coffee are much larger than those of the "purified" product.

The use of coffee as a price leader in retail sales is a far more important element in coffee marketing than is the competition of substitutes. Coffee is a packaged, branded, intensively advertised product, and therefore highly suitable for such use. In consequence, the demand for it becomes a composite demand. Consumers probably do rather little "loss leader shopping" except in severe depressions. Coffee is usually bought with other food products. The consumer demand for it is more than merely joint demand for coffee and products habitually used with it, such as cream, sugar and coffee cake. Since coffee is specially selected as a price attraction, it may be bought together with any other product on sale in the grocery.

Competition among retail outlets forces prices on other coffees down with the price of those highly advertised coffees which are ordinarily the first to be cut. The dwindling of retail markups exerts pressure backward on jobbers' margins and tends to have the effect of reversing the advantages of integration with respect to large companies using intensive advertising: if such companies regularly sell through intermediaries, they are in the position of getting practically free distribution. The consumer asks for the product and not only weakly organized independent grocers, but even chain stores do not dare to stop carrying it. Small firms selling through jobbers are not in so fortunate a position, and must make concessions to their distributors as the retail price goes down. Coffee stores in which the retail store and the "roasting plant" are combined under one small roof are of course adversely affected by the use of their sole product as a price leader. In this, their plight is similar to that of any specialized retail outlet competing with a department store. Grocery stores, which have the advantage over coffee stores in this respect, are themselves subject to severe competition of super-markets, a number of which use the grocery department as a loss leader department. This competition is even more severe than that of full line department stores. Some super-markets make it a practice to let all but the grocery department. This department is located in the rear of a one-floor establishment, prices are cut severely, and rentals on other departments are based on the traffic brought through the store. Department stores and super-markets that let few or no departments are also prone to use groceries as loss leader products.

The foregoing remarks dealt with the nature of the demand for coffee and with characteristics of the consumers' market arising from the structure of the retailing industry and marketing practices of coffee-suppliers. The manner in which the consumers' demand is transmitted to the coffee processing industry is complicated by the wide variation in current distribution methods.

Except for restaurant and hotel demand - which constitutes a fairly distinct market - intermediary markets for coffee cannot readily be segregated for analysis. Shelf stocks and supplies in transit between roaster and consumer vary widely, and retail price changes have diverse effects on the roaster, according to the directness of the transaction. The fact that members of the coffee industry as defined under the N.R.A. sell to consumers, to retailers, to wholesalers or to combinations of these, makes it difficult to state precisely in what market a given roaster's price is effective, and complicates considerably their relationship between consumer demand and selling prices set by coffee roasters.

Differences in demand for individual brands of coffee, based on actual coffee quality, blend taste, type of container and variance on these induced by intensive advertising result in an elaborate structure of price differentials in the coffee industry. No information has been collected showing whether or not the differentials tend to fluctuate on the basis of averaging to fixed differences between grades, whether they tend to maintain fixed percentage relationships with each other or whether and in what way they change with changes in the price levels. Practically no factual information is available on which to base even moderately precise measurements of the way in which a price cut at one point in the price structure spreads through that structure. It cannot be said therefore to what extent a price cut exerts its influence on a single quality level and to what extent it tends to spread through the whole price structure. Sound price analysis of the industry is obviously an extremely important base on which to build a regulatory system involving such concepts as "destructive price cutting" and "meeting competition."

III. THE COST STRUCTURE OF THE INDUSTRY

The following table illustrates the relative importance of the various cost items in the coffee industry. They are not actual figures, but are not actual figures, but are probably close estimates, and may be regarded as representing with reasonable accuracy the relative magnitude of the items listed.

TABLE IV

A. ESTIMATE OF THE COST OF A BRAND COMPARABLE WITH STANDARD BRANDS, INC.

	Per 100 lbs.
Green Coffee replacement cost	$13.00
Roasting cost	.50
Shrinkage cost	2.37
Slip top cover head	2.30
Label cost	.35
Shipping containers	.50
Labor cost	.35
General and administrative overhead	2.50
Freight	.50
Delivery to dealer	.75
Advertising	5.00 to 6.00
	$28.02 to $29.02

(From Transcript of Hearing, Standard Brands, April 30, 1934, pages 105-107.)

B. ESTIMATE OF THE COST OF SANTOS COFFEE IN 1-POUND LITHOGRAPHED BAGS AT CHICAGO

	Per 100 lbs.
Current replacement f.o.b. port	$11.25
Inward freight	.40
Roasting cost (including direct labor, fuel & power, depreciation and maintenance of equipment)	.50
15% shrinkage	2.14
Cost of grinding (includes labor, power, depreciation and maintenance of equipment)	.15
Cost of bag and liner	.70
Cost of packing labor	.22
Cost of shipping containers, etc.	.25
Manufacturing, general and administrative overhead (not including distribution cost)	.71
Selling expense (including credit and collection, bad debts, etc.)	.75
Freight and/or delivery	.50
	$17.57

(From "Cost Finding" Folder, Deputy's Files, N.R.A.)

Both of these estimates were presented by the Code Authority. The first ($28.02-[illegible]) was used by the Code Authority at the hearing before the National Compliance Council as an argument for having one of Standard Brands' prices declared in violation of the code provision prohibiting sales below cost. The other ($17.57) was submitted to the Deputy Administrator as evidence that a retail price of less than 19¢ should be investigated as a presumptive violation of one or more of the governing code provisions - sales below cost in the Coffee Code, 2% minimum mark up in the wholesale code and 6% minimum mark up in retailing.

Time does not permit the investigation of the substantial difference between the two cost estimates with regard to administrative and general overhead. Other discrepancies between the magnitude of the comparable items for the two sets of figures appear logical, although their accuracy in detail has not been checked. The tin can is known to be considerably more expensive than the paper bag, and the delivery system used by Standard Brands is necessarily more costly than that of most of its competitors because of company's practice of dating coffee and making frequent deliveries direct to retailers. The very large advertising cost shown for Standard Brands was probably based on fairly close estimates, since the company did not contest this figure at the hearing before the Compliance Council.

It is apparent that green coffee cost, packing and advertising constitute the chief cost elements for a company of the type of Standard Brands, with general overhead next in importance. Except for advertising, these elements also constitute the major expense of other roasters. Labor cost is a very small part of total cost. Allowing for the possible inclusion of labor elements in roasting, grinding and general overhead, in the case of the company using paper bags and spending nothing on advertising, the total would probably be less than 6%. Except in a borderline case on sale below cost, differences in labor cost played practically no part in code administration. The comparative insignificance of labor cost served to emphasize the very decided importance of trade practice provisions in the code for the coffee industry.

There are several possible areas of cost variation among members of the industry. The extent to which these lie within the domain of benefits deriving from large scale operation and integrated function may be noted briefly.

In the purchase of green coffee, small roasters incur an added expense in brokerage fees and l.c.l. freight differentials. Very many roasters buy on the Exchange, and even large roasters buy considerable quantities through green coffee importers, so that, except for the possibility of a favorable deal in the producing countries, the advantage of the very large concerns in the acquisition of raw coffee is probably not an important element in their strength. It becomes so only in case a large roaster with heavy stock on hand decides to maintain or cut his coffee price against a rising green coffee market. This involves a sacrifice on green coffee for the sake of winning new customers, and may well yield a net profit. Smaller concerns can meet this price policy only by taking an out-of-pocket loss on current green purchases, unless they happen to be engaged in an unusually large speculative venture in green

coffee. The difference in stocks carried would have to be very large and the market movement strong and of some duration in order to make the campaign on the part of the large company worthwhile. (The huge corporations may well carry stocks which are larger than those of smaller competitors, even considering differences in scale of operation. Standard Brands has on a number of occasions announced one month sales in the face of a rising green coffee market.)

Medium sized and large companies have an advantage over small operators in the use of vacuum cans. Most small firms do not use vacuum packing because it requires somewhat more expensive machinery, and for the more important reason that it is unsound business practice to put too large a part of the selling price of an unadvertised product into the cost of the container. Medium sized concerns, with efficient selling, can put out a vacuum pack. The effect of difference in resources is much less pronounced in this industry than it would be if the product were subject to significant improvement through research. Laboratory work on cans and vacuum jars is done by large can and glass companies competing for the container business of the coffee roasters.

Very large companies have an advantage in the type of equipment that is used for paper bag pack. This equipment is very expensive and is, therefore, quite out of reach of small or even medium sized companies. Its use may make a difference of as much as 3% in the total cost of the packed coffee. While this percentage may appear small, it has an important competitive effect since it reduces the extent to which small companies can resort to their principal means of securing business -- namely, an appeal to price. The small companies generally sell their coffee in paper bags and cannot afford to build up demand by advertising. The price differential they can offer is reduced by their lack of mechanization.

A far more important advantage of large scale enterprise is the ability to spread the cost of tremendous advertising campaigns over a very large output. Even with large volume, the advertising cost of a major company was estimated at 5 - 6¢ per pound by the Code Authority. All three of the major corporations and a number of smaller ones carry on costly radio, newspaper and other advertising campaigns. Since there are no definite utility standards for coffee, and since consumers cannot easily distinguish minor differences in quality, the building up of consumer demand for a particular brand name is extremely important. Some comparatively small companies have been successful in advertising the "exceptional quality" of their product. Sales of Guatemalan coffee at a price of about 80¢ per pound are now being promoted successfully by an enterprising sales management firms in New York; the margin over the green price of best quality coffee grown is probably in the neighborhood of 40¢ per pound. Other companies succeed in adding large markups through clever salesmanship, addressed to a restricted clientele. From the standpoint of the industry as a whole, the national advertising campaigns of large companies and the intensive local advertising of sectional roasters are much more important than the exceptional excursions in myth creation on "super-quality." The nature of the product makes all these types of campaign possible; the choice is determined by the individual company's scale of operation.

Grocery chains have an apparent advantage over concerns engaged exclusively in roasting coffee, in that they combine the processing and distributing functions. This does not apply to the hotel and restaurant trade, which does not move through retail outlets, but since specialization in that line is rare, most members of the industry are affected by the competitive advantage of integrated concerns. The advantage consists of more than merely saving in selling expense, which is counterbalanced by considerable costs involved in supervision. The chief advantage of complete integration, such as the chains, lies in the fact that they sell their own and their competitors' coffees over the counter, and are therefore in a strong position to influence consumer demand. A similar situation obtains in the operation of wholesale grocers who roast their own blends and also handle a large line of competing coffees, although the contact with ultimate demand is much less direct in this case.

A concluding remark on costs of operation may be made; the percentage of capacity operation has an important effect on processing costs. Some coffee roasters, are already operating on exclusive agency arrangements or are attempting to do so, in order to get as large a part of their sales as possible on a requisitioning rather than a salesmanship basis. While there are no figures available on the effect of rate of operation on processing costs, it is apparent logically that low rates with roasting ovens of fixed capacity are inefficient. The industry attempts, in fact, to run more than one shift, and often does so. It is probable that processing costs vary more with rate of operation in the same firm, than between one firm and another, with the exception of extremely large firms. Overhead is also an important item, so that the combined pressure of these cost items is exerted for increasing volume. Since the per capita consumption of coffee is highly stable and population growth is decelerating the struggle for volume is exceedingly severe.

IV. COMPETITIVE CONDITIONS AT THE TIME OF CODE FORMULATION

It may be possible to construct a statement of competitive conditions in the coffee industry at the time the code was offered for administrative approval. Very detailed and rather confidential information on costs, sales volume and trade relations would be necessary. It was not feasible to attempt any such analysis for the present report. However, it is of interest to note some plausible hypotheses concerning the course of the industry in the period preceding the establishment of the National Recovery Administration.

The coffee industry includes among its members three of the major corporations in the United States: the A. & P., General Foods, and Standard Brands. Each of these possesses enormous resources, either in actual cash reserves or in ready access to the capital market through powerful banking connections. Any of them, if operating alone among the swarm of lesser competitors, could readily embark upon a campaign of absorption or displacement, so as to take over rather rapidly a much larger share of the coffee business. They might, of course, find it difficult to restrain business from very small firms since it is easy for a new, small enterprise to replace one that has failed.

Perhaps the major gain - if there were one - would be at the expense of medium sized firms. Such a campaign is seriously deterred by the actual functioning of three such giant companies in the same industry.

A struggle among them might be disastrous to all three, and would certainly be extremely costly. Drastic competitive steps on the part of the A. & P. - such as refusal to handle Chase and Sanborn, or Maxwell House Coffee - might quickly drive the other companies into alliance with grocery associations that could be dangerous to the whole business of the A. & P. Conversely, the A. & P. is probably by far the largest single customer of either of the other two, and the sudden decision on their part to refuse to sell to the chain would very seriously affect their sales program and cost position. The A. & P, therefore continues to sell a huge volume of coffee roasted by the other two companies, and the latter sells coffee to the grocery competitors of the A. & P. The severity of the competition among these three is tempered by the necessity of their continued trade relations.

A competitive condition approaching stalemate between giant corporations in an industry with many small members may foster the development of an "umbrella monopoly". Uniformity of sales policy might be achieved by three principal competitors in some other industry without subjecting them to persecution for restraint of trade, and might materially hasten their growth at the expense of smaller companies. The diversity of interest among the three largest coffee roasters, growing out of their differences in mode of operation, militates against their combining with each other. The three leaders are definitely and expensively committed to their separate ways of doing business.

Fragmentary evidence - figures on green coffee imports and on total dollar sales of the large companies - indicate an increasing concentration of business in the hands of the large concerns in the past decade. The position of the next seven firms (ranked in size) indicates that the rate of concentration has been retarded by the considerations noted in the preceding paragraph, and that medium sized firms have been losing volume to the very large firms rather than that the smallest enterprises of the industry have been displaced. The very large number of firms in the industry is an additional influence against attempts at complete monopolization. The course of monopoly is, in any case, likely to stop nowadays with the absorption of that area of the field which can be handled efficiently within the bounds of a unified business policy. The fact that equipment required in coffee roasting is not very complex, and that equipment manufacturers may not have adjusted their production programs to a replacement business, makes the coffee industry comparatively easy to enter. Roasting and packing machines can be bought at fairly low prices and on generous terms. The durability of the equipment makes it possible for the number of firms in the industry to remain constant or increase even in the face of a high mortality rate.

The resolution of these economic forces gave the industry margins enough to ensure profitable operation for the great majority of its members several years ago. It may be that this was an unstable condition. Unchanging, or very slowly increasing total consumption was a constant temptation to well situated concerns to embark on programs of relative expansion. Furthermore, a protective monopoly affording attractive margins invites new enterprise and a thinning of volume per firm. Net returns under such a development could be maintained only with a still higher price structure, and the logically expected inelasticity of demand might break at hitherto untested price levels.

The impetus to price war, however, came from outside the industry. The depression forced coffee prices downward in sympathy with other food prices. Still more important was the growth of cut-rate grocery retailing. With newly developed super-markets taking the lead in price cutting, and branded, well known products the favorite objects of price attack, coffee prices were cut drastically. In addition to open price cuts, many indirect price concessions were granted. Unearned fees and advertising allowances, contracts guaranteeing purchaser against price decline during the delivery period, free deals, re-billing of purchaser's unsold stock when prices fell, loans or gifts of urns and other equipment were common. Chain stores retaliated against super-market selling prices, and the resulting price wars spread through the industry.

V. THE PRICE CONTROLS

A. Discounts and Allowances

The representatives of the coffee industry felt that protection against destructive price cutting was essential and that prohibition of sale below cost was the most effective method of securing such protection. Price filing was instituted as a means of making prices and terms of sale public, so that violations of the code could be detected

readily. (*) Various types of indirect price concession were declared to be unfair trade practices. Some of these were unobjectionable in themselves, but would have made provisions against sale below cost much more difficult to enforce. Examples of this type of selling practice are: contractual guarantees against price decline; rebilling of customer's unsold stock, when prices fall; free deals; and loans or gifts of equipment. An attempt was also made in the code to prevent the payment of unearned brokerage fees, advertising allowances and quantity discounts.(**) Controversies over brokerage were very involved and bitter during the active life of N.R.A., and were still going on at the time of the Schechter decision. However, they did not reach the stage of litigation or even of compliance board hearings.

Advertising allowances and quantity discounts were also subjects of considerable disagreement.(***) With regard to advertising allowances, it may be said that large companies, which are the most frequent recipients of generous allowances for advertising and display, maintain detailed accounting records of selling services rendered in this manner. Similarly, large companies granting the allowances do or can ascertain the extent and approximate value of such services. The Patman investigation of the practices appears to have developed fairly convincing evidence of over-payment.(****) In view of the size of the companies most favored in the receipt of the allowances, the practice may easily have a dangerous tendency toward monopoly. Effective enforcement requires detailed records of transactions, and is very difficult.

The Coffee Code required a quantity discount to be "based upon and reasonably measured by a substantial difference in the quantity sold and delivered". The provision is vague, and could not be expected to result in uniform discount practices or, of greater importance, in clearly defined discount policy. Economics achieved by an order of a given size may vary considerably from company to company, and for the same company depending on current operation conditions. Size of plant and rate of operation are determining factors in estimating cost reduction for given quantities. If a plant is already working at close to maximum output, a large new order may reduce operating efficiency: such an order would be beyond the optimum size for current circumstances and would be attractive only at an advanced price rather than a discount, unless a new and desirable customer is involved. There is also the consideration which is often rated even higher than cost reduction by a company manager, and that is the sales stimulation achieved by selling a customer more than the customer's ordinary purchase. Such a sale may be expected to induce greater resale effort on the part of the purchaser,

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(*) See Article VII of Code for the Coffee Industry, Code of Fair Competition, Volume VI, Page 277

(**) Ibid. Article VI, Sections 7 to 14, inclusive, Pages 275 and 276

(***) Ibid. Article VI, Section 7, Page 275 and Section 13, Page 276

(****) Hearings before the Special Committee on Investigation American Retail Federation, House of Representatives 74th Congress, 1st Session, July 9, 1935.

and may have a valuable influence in the area in which that purchaser does business.

Most of the large firms in the Coffee Industry filed list prices and quantity discounts which were presumably the same for all cutomers for that filing. There appears to have been little reason to probe the reasonableness of the discounts in most cases. The quantities quoted were in general very small in relation to total business of the vendor. In an Industry in which each company has many customers, single orders are not likely to involve important changes in operating efficiency. The cases in which this situation did not obtain - that is, in purchases by extremely large buyers such as chains - were not subjects of complaint by competitors on the grounds of excessive discount, and no Code Authority investigations were instituted.

B. Destructive Price Cutting and Sale Below Cost

Premiums, allowances and discounts must be specified if the actual selling price of goods is to be precisely stated. Fixity of contract price assures the industry that the contract price represents a complete transaction. Price filing also is necessary to the definite knowledge of prices. All these elements build up the knowledge of price. The Code Authority undertook to decide whether or not the price including all these elements was permissible.

The industry regarded prohibition of sale below cost as essential to the prevention of serious capital impariment and perhaps bankruptcy on the part of a large number of its members. The protection of cost is a social-economic procedure requiring careful evaluation. That the consumer benefits in the short run from price cutting is obvious. He may lose later if the price cutting is so severe as to bankrupt the whole industry and thereby withdraw the product from the market, or if the industry's functioning is disrupted and its total performance, in goods processed and services rendered, substantially reduced. The society may be injured and the consumer may get less for his money from the industry if the price war results in monopoly. These possible developments may take place under unregulated price cutting or under restricted price cutting. In the former, sales below cost may result in the survival of the enterprise with greatest cash reserves or easiest access to credit, even if such a firm is not otherwise the most efficient in the industry. With price cutting restricted to operating cost as a minimum, the competition is more nearly one of efficiency in operation.

While it appears to be in the interest of the economy as a whole to remove all obstacles to a competition of efficiency, there may be serious drawbacks to the predictable result. There may also be greater social costs entailed in the very abrupt dislocation of participants in inefficient enterprise than would be recovered in a considerable period of optimum functioning in the adjusted industry. Setting operation cost as a floor to price and circumscribing the manner of computing cost serve to reduce the rate of displacement if the computation is so ordered as to prevent the use of non-operating advantages and perhaps even to prevent the full use of operating advantages. The N.R.A. was forbidden, in the enabling Act, to include in codes of fair competition any provisions which might tend to foster monopoly or oppress small enterprise.

The condition of national emergency attacked by the N.R.A. was one in which, in many industries, small enterprise was having much greater difficulty than large. Socially minded administrators might therefore feel that the N.I.R.A. permitted the insertion in codes, of rules calculated to improve the relative position of the small firm. It is pertinent here to examine briefly essential features of the prescribed formula for computing cost in the Coffee Industry and comment on the significance of the most important rules therein set forth.

C. The Cost Formula. (*)

(1) Minimum Price Proposal as Originally Presented.

The Minimum Price Proposal included in the first draft of the Code submitted In August, 1933, prohibited a member of the Industry from selling "below his own actual cost of production as determined by uniform cost finding principles to be prescribed by the Associated Coffee Industries of America," with the one exception that he might meet the lawful price of a competitor.

This proposal, evidently did not have the full and unqualified approval of the Industry, or of the proponents of the Code. The draft of the Code submitted in September, 1933, did not contain the "selling below cost" provision. This draft prohibited Destructive Price Cutting and in the event of an alleged violation provided for an examination of the records of the accused company by a firm of accountants to be selected by the Coffee Industries Committee. The Code carried no definition of "destructive price cutting" and there was a short discussion in the Hearing held October 24, 1933, relative to the provision and the steps to be taken in determining whether or not a violation had occurred.

This September draft also provided for the use of an accounting system by every roaster which would conform "to the principles and (be) at least as detailed and complete as the standard and uniform system that may be formulated by the Coffee Industries Committee."

The objection to the proposal submitted in August appears to have centered around the use of the Cost Formula.

(2) Interests and Description of Proponents

The Code was presented by the Associated Coffee Industries of America. In addition, approximately 200 companies who were not members of the Association participated in the preparation and adoption of the Code. This group of 550 represented more than 50% of the Industry by number: The 350 members of the trade association alone imported and/or processed approximately 85% of the total volume imported.

The proponents were apparently fully representative of the Industry, but few dissenters appearing at the Hearing.

Price wars were claimed to be prevalent in the Industry, creating widespread demoralization and serious impairment of capital assets.

(*) This account (pages 23, 27 inclusive) of the development of the cost formula was written by D. P. Fitzgibbons. See also, "Minimum Price Regulations under Codes of Fair Competition", by Saul Nelson, NRA Administration Studies, 262 et seq.

It was claimed further that the highly integrated concerns and those with large capital assets were gradually acquiring an increasing percentage of the total volume, thus tending toward monopoly. This was attributed to their ability to make large purchases in a low price green coffee market, sufficient to carry them well into or through a rising market, and to their low cost of production and distribution.

It was believed by the proponents that a minimum price floor would eliminate, or at least greatly curtail, the price cutting which was rampant in the Industry and prevent a number of bankruptcies.

(3) Opponents

There was evidently sufficiently strong opposition from members of the Industry to the proposal included in the August draft of the Code, (which was similar to the one finally adopted), to cause it to be deleted from the draft submitted in September. NRA files contain practically no data relative to the members who objected or to the nature of their objections, although the objections apparently were based on the use of a uniform Cost Formula.

N.R.A. Consideration of Proposal

The only Transcript of a Hearing on this Code in the NRA files is that of the joint Hearing of October 24, 1933, before the A.A.A. and N.R.A. At that time the September draft of the Code was under consideration and the only Sections with which N.R.A. was concerned was the Labor Provisions.

The final draft of the Code, submitted January 9th, 1934, apparently was worked out in conferences after full jurisdiction over the Code had been given to N.R.A.

The Code as finally approved prohibited "destructive price cutting", and provided that no member of the Industry should "sell roasted coffee below his own individual cost", with the two exceptions (1) that he might meet the lawful price of a competitor, and (2) that he could sell to government and charitable institutions at any price he desired. (Through an interpretation this last exception was ruled to mean only "government charitable" institutions and not all government institutions.) It also provided for "open price filing" and for the use of an accounting system as complete and detailed as that formulated by the Coffee Industries Committee with the approval of the Administrator shall from time to time set forth the elements which shall enter into cost."

(4) Development, Presentation and Approval of the Cost Formula

The Cost Formula which was presented with the August, 1933 draft of the Code was evidently prepared by the Associated Coffee Industries of America. As already indicated, there apparently was strong opposition from members of the Industry to this Formula as it was not

included in the Minimum Price Proposal of the Code submitted to A.A.A. in September, 1933. Mr. Williamson, Secretary-Treasurer of the Associated Coffee Industries of America stated at the Hearing, October 24, 1933: "We did submit, we submitted a cost schedule, with the previous Codes, which is not before us at this time, and has not the support of the Industry."

Apparently the larger units of the Industry originally were not in favor of the Cost Formula, but finally agreed not to oppose it.

The minimum price proposal included in the August, 1933 Draft of the Code provided that cost should be "determined by uniform cost finding principles to be prescribed by the Associated Coffee Industries of America subject to the approval of the President, such cost to include market replacement value of green coffee as determined by a committee authorized by the Associated Coffee Industries of America, a minimum shrinkage of 16%, and cost of delivery incurred by the seller".

The final draft provided that "the Coffee Industries Committee with the approval of the Administrator shall from time to time set forth the elements which shall enter cost."

The salient features of the August, 1933 proposal were a set of "Principles and Procedure of Cost Finding Pursuant to the Provisions of the Code" and a Cost Chart which set forth the various elements of the cost of production and selling with the several factors which entered into each. These elements included:

Green Coffee Cost,
16% Shrinkage
Roasting Cost,
Grinding Cost,
Overhead,
Selling and Delivery Expense,
Shipping Container Cost, Packing Labor and share of Overhead for Bulk Coffee,
Shipping Container Cost, Package Cost, Packing Labor and share of Overhead for Packaged Coffee.

The August Proposal provided that "selling price, in the case of Chain Stores or retail distributors who operate coffee roasting departments, shall mean the price at which coffee is invoiced to the retailing department", and that "selling price in the case of wholesale grocery company which operates a coffee roasting department shall mean price coffee is charged to wholesale department." These were not incorporated in the draft submitted to the N.R.A., and in addition the shrinkage allowance was changed from 16% to 15%. An additional element, "Advertising Expense", is found in the draft submitted to the N.R.A. This had not appeared in the previous draft.

After a number of conferences the Formula was approved March 31, 1934. The Formula, as approved, contains a number of modifications

from the draft submitted, the principal ones being:

1. The shrinkage percentage was changed from an arbitrary 15% to actual shrinkage.

2. The proposed draft provided that for those companies who had no accounting records or adequate data for determining cost according to the Formula Cost should include,- Replacement Cost, 16% shrinkage, plus such additional mark-up for various operating functions as should be determined to be the average for the Industry on the basis of a survey to be made by the trade association. This was deleted from the Approved Formula.

3. Depletion was limited to that portion of the plant and equipment actually in operation and used in processing of coffee.

4. The item of "Rent" was limited to rent that may be reported for income tax purposes

5. The item of "Taxes" specifically excludes income taxes.

6. An additional item was included showing the cost and weight of any material which is added to coffee. The cost figure arrived at per 100 pounds of such mixture is to be adjusted to reflect the presence of the cheaper adulterant.

7. The items of "Dues and Contributions" and "all other expenses" have been deleted under the heading of Overhead.

N.R.A. files do not indicate what steps were taken to induce those members of the Industry who had opposed the use of the Cost Formula to withdraw their opposition. The files contain little evidence of opposition to the proposal from members of the Industry. This opposition came from a group whose profits were secured through speculation in the green coffee market; from Standard Brands, Inc., whose objection was that the replacement cost provision of the Cost Formula was unfair to and worked a hardship on their particular type of operation; and from one mail order company which insisted that certain provisions of the Formula were detrimental to its sales policy.

The changes which were made in the proposed Formula, were evidently made upon the recommendations of the Deputy and various Advisory Boards.

The Consumers' Advisory Board objected to the use of "Market Replacement Value" in arriving at the cost of green coffee, and suggested that "Market Replacement Cost, or actual cost, of green coffee, whichever is lower" be used. This Board contended that as green coffee was the most important element of cost in the Industry, "the consumer would be unduly penalized," because the use of "Replacement Cost" as proposed would eliminate such factors as "individual purchasing efficiency, the saving resulting from large purchasing power, and foresight in buying." The Deputy, in recommending approval of the Formula, answered the objections of the Consumers' Advisory Board with the statement that use of the "least actual cost" would result in enabling "large buyers to throw large quantities of roasted coffee on the market at prices which would eliminate all competition and create monopolies for large buyers, particularly on a rising market."

The Consumers' Board also protested against the inclusion of "Selling and Advertising Expenses" claiming that they "are associated with the business policy of each individual in his attempt to gain as large a share of the market as possible" and "do not seem to fit in with the general policy of regulating the Industry as a unit." The Deputy's reply was that "since four or five of the largest companies make heavy advertising expenditures to secure their volume, and the small and less efficient competitors could not possibly approach the cost of these large concerns, excluding advertising expense" he believed "Advertising and Selling Expense" should be included.

(5) Analysis of Controversial Features of the Cost Formula

Controversy arose on the following points: The use of replacement cost for green coffee, the use of a two-week effective period for each determination of replacement cost, the inclusion of advertising and selling in the computation, the allocation of general cost to coffee on the basis of percentage of dollar sales in companies making or handling many products, and related problems involved in permission to sell below individual cost computed according to the code in meeting legal competition. The use of replacement cost deprives the consumer of possible benefit from price cuts based on relative economies realized by any coffee roasting company on its green coffee deal. Such economies might result in general from integration which includes coffee growing, from favorable plantation contracts, from shrewd buying in the coffee markets, from clever or fortunate speculation (in which a company deliberately handles, either sporadically or regularly, much more than its own green coffee requirements), or from the use of inside information on governmental control policies in producing countries. Integration of this type is not a factor in the coffee industry. Governmental control of the coffee crops makes continued and pronounced advantage in green coffee purchases more likely to be a matter of contacts than of shrewd estimates of trends in the market. This is a non-operating advantage. If successful speculation is irregular, and the winners in any market period chose to spend their speculative profits on price cuts, to attract a larger relative share of the rather stable total sales of roasted coffee, processors who do not gamble on green coffee could be eliminated. The use of replacement cost in the code formula can be interpreted as an attempt to dissociate the processing and distributing industry from green coffee speculation. From the practical standpoint, it may be viewed as a curb on the expansion of the very large companies. These companies are in the best position to make favorable deals in the producing countries. They are also in a position to finance much longer stocks than are customary in the industry. If they choose to sell these stocks at cost, or at under average inventory cost prevalent in the industry, when the green coffee market turns up, they can make serious inroads into the business of their competitors.

Replacement cost was estimated by the Code Authority every two weeks. The procedure was as follows: a green coffee committee met in reach of the three chief ports of entry -- New York, New Orleans and San Francisco -- to estimate the representative price of green coffee in the port market. These estimates were submitted to a central committee in New York, and a figure based on all three was issued to the trade as the replacement cost effective for the next two weeks. The accuracy with which these figures represented the current market was seriously questioned in only one important instance -- the hearing before the National Compliance Council on the alleged sale below cost by the H-P Company of St. Louis. Verbal arguments, and comparisons with trade journal quotations compiled by the N.R.A., satisfied the Council that there was no observable bias of any significance in the Code Authority figures.

The use of a two week period raised a more difficult problem: namely, whether or not a short period handicapped companies which made frequent deliveries, in competition with those whose delivery interval was longer than two weeks. The occasion on which the use of a two week period was

strongly attached was the Standard Brands hearing before the National Compliance Council. Standard Brands is committed to a policy of frequent deliveries. The company maintains a delivery service direct to retailers. The service is also used for Fleischmann's yeast, which appears to be subject to deterioration if held in stock too long. Since the delivery service is in operation, and since coffee is known to lose its flavor after roasting, Standard Brands has advertised its frequent deliveries of "dated coffee" very intensively. The expense of the delivery service is balanced against the saving on the jobber's margin and the difference in price between a slip-top can or paper bag and a vacuum can. Incidentally, retailers do not have to be persuaded to carry heavy stocks. However, the company complained that its coffee was at a serious handicap in a rising market, in competition with heavy dealer stocks of other coffees. It is a common practice in the industry for the roaster to try to "load" his dealers if a rise in green coffee is anticipated. Standard Brands argued that it should be permitted to quote its retail outlets competitively with the shelf price of competing coffee. The Coffee Code Authority maintained that such procedure would be impracticable.

Moreover, the code provisions prohibiting guarantee against price decline in delivery on contract and forbidding the rebilling of dealers' unsold stock, gave the companies using frequent delivery an advantage in a falling market. Green coffee prices actually fluctuated during the code period. That is, the movement was not entirely in one direction. The extent of injury (if any) to Standard Brands and other companies using that method of delivery would be very difficult to estimate. The propriety of the two-week period would be very difficult to establish on a precise basis. While this is not a conclusive agrument in an industry in which there are important differences in methods of distribution, it may be noted that the industry seemed to be satisfied with the two-week period. The National Compliance Council accepted in its deliberations evidence supporting the claims that the replacement figures established represented market conditions with reasonable accuracy.

Perhaps a better plan than the two-week replacement cost determination might have been worked out through careful analysis of actual data on stocks carried (green and roasted) by roasters, roasted stocks carried by jobbers and retailers, and of the duration of price swings in the green coffee market. This could scarcely be done in the haste which characterized the period of the code formulation, and might not have resulted in usable findings in any case.

Another point which aroused some discussion in the administration's consideration of the cost formula was the inclusion of advertising and selling costs. If advertising costs are protected in an industry operating under conditions of inelastic demand, there is danger of burdening the consumer with prices based on unwarranted advertising expenditures. However, a realistic consideration of the coffee industry reveals the fact that very many of its members do little or no advertising and that some of them do no "selling" beyond that involved in sending catalogues to prospective customers. The fact that many coffee companies do a substantial proportion of their business on a re-order basis, and the fact that the code permits selling below cost to meet competition should be considered in weighing the effects of including selling costs in the formula.

Advertising may be expected to do one or more of the following for the company using it: secure and maintain access to market, raise the demand for the company's product and thereby cause it to sell at a premium in comparison with competing goods, increase volume and thus reduce operating costs per unit. In the Coffee Industry, the first two of these possible benefits are probably much more important than the third. Severe competition among alternative distribution methods in the marketing of coffee, and loss leader selling of coffee at retail make access to market extremely important to coffee roasters. Retailers are practically forced to carry the brands of coffee which are intensively advertised, no matter how price wars have cut the retail mark-up on them. This gives the advertiser a very decided competitive advantage. If one of the purposes of the Coffee Code was the prevention of the rapid displacement of small coffee roasters through sales below cost by their large, powerfully financed competitors, the inclusion of advertising expense in the cost formula was logical. The Code Authority -- and the advertisers -- went further in recognizing the actual effect of advertising. Companies whose products are very well known would not have been permitted to meet exactly the price of non-advertised coffee, and they did not, in fact, attempt to do so. Large companies did, however, try to get low-price coffee business through aggressive selling of their own non-advertised brands. In pricing both classes of product these companies could use such advantage as they possessed in operating efficiency. Only the advertised brands were required to carry advertising costs.

Opposition of the consumer interest to the inclusion of advertising in the cost formula has been noted in the account, above, of the approval of the formula. There was also some controversy in the industry on the method of inclusion of advertising in the formula, on the ground that advertising expenses should be averaged over a long period because sales volume fluctuates with business and competitive conditions, and because an advertising campaign should be charged to the sales volume it brings in rather than current volume.

The issue involved in the inclusion or omission of advertising cost was the relative importance of raising the price of coffee to the consumer and, since it is easy to enter the coffee business through the purchase of equipment at bankruptcy sales, the equipment is very likely to continue in use even if many small firms are forced out of business, but the individual, small enterpriser may lose in the competition. To the extent that non-operating advantages of large firms were responsible for his elimination -- and perhaps even beyond that -- his loss may be a matter of social concern, and one of the forms in which that social concern may be expressed is in the design of price controls in the industry.

V. THE ADMINISTRATION OF THE PRICE CONTROLS

A. Price Filing Under the Code

The Code Authority repeatedly sent letters to the industry calling for price lists, but did not ordinarily prosecute failure to comply with this code requirement. The industry includes a large number of very small firms, many of which change their prices infrequently. Those whose prices were above cost or were regarded as probably above cost because no competitor complained of their being very low, were not prosecuted for neglecting to file. There were very few compliance actions on price filing. One, in which a member's Blue Eagle was removed, was the case of the Sayre Wholesale Grocery Company of Sayre, Oklahoma.

Complaint against this concern was made June 19, 1934, on charges of refusal to file price lists and sale below cost. The latter charge was dropped for lack of evidence, and the complaint on price filing sent to the National Compliance Council by the State Director on August 7, 1934. (It may be of interest to note that action was concurrently under way against this company for dismissing employees to whom it had been required to pay back wages. No record of the outcome of this action is at present available.) The Sayre Company's Blue Eagle was removed November 27, 1934 and the case turned over to the Litigation Division. The Regional Attorney advised against litigation (in letter dated February 27, 1935) on the ground that the presiding judge was unwilling to try any more NRA cases until a Court of Appeals or Supreme Court decision had been rendered. The case was suspended March 5, 1935.

The defense offered by the Sayre Company at NRA consideration of the matter was that they were new in the business and did not wish to expose their prices to competition. They had been selling coffee for about a year and a half. While the absence of price differentials or exemptions in favor of new firms under the coffee code removed one of their chief means of building sales, the possibilities of attracting trade through efficient service and by salesmanship with regard to the quality of the blends still remained. The case is mentioned here only because of the argument offered in defense.

The accompanying tables and charts summarize price filings in the Coffee Industry. Price filing became operative on February 26, 1934. Of more than one thousand firms that submitted price lists at some time during the code period, only one hundred twenty-five filed ten or more price lists. (Table V). The number of companies which began price filing in each month is shown in Table VI, as well as the number filing their last price lists each month and the date of filing for those submitting only one list. (There are discrepancies in these tables due chiefly to errors in counting branches and subsidiary companies. Time did not permit a recount treating all branches and subsidiaries as one company even where separate lists were filed. The errors do not seriously distort the present account of the extent of price filing.)

TABLE V

Number of Price Lists Filed	Number of Companies
1	429
2 - 4	314
5 - 9	162
10 -14	57
15 -19	22
20 -24	13
25 -29	15
30 -34	8
35 -39	3
40 -44	2
45 -49	1
50 -54	0
55 -59	0
60 -64	1
65 -69	3
Total	1030

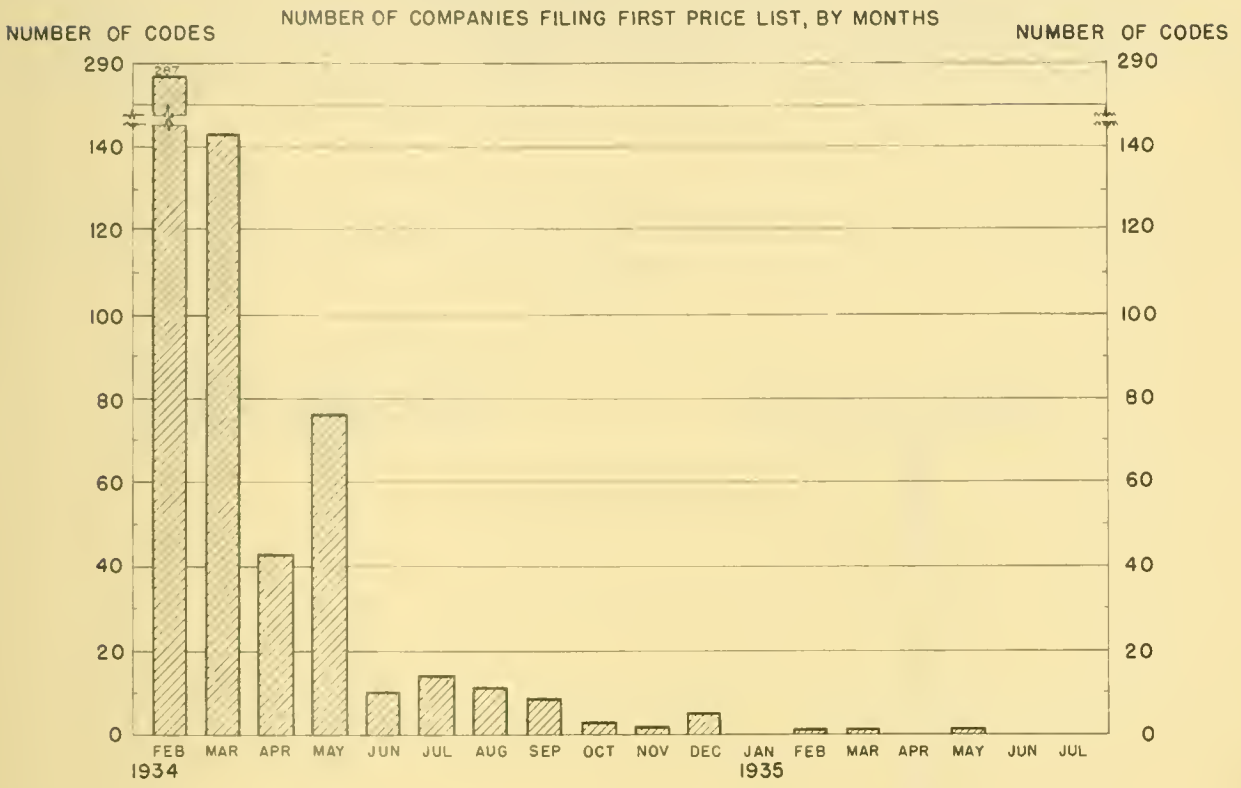
TABLE VI

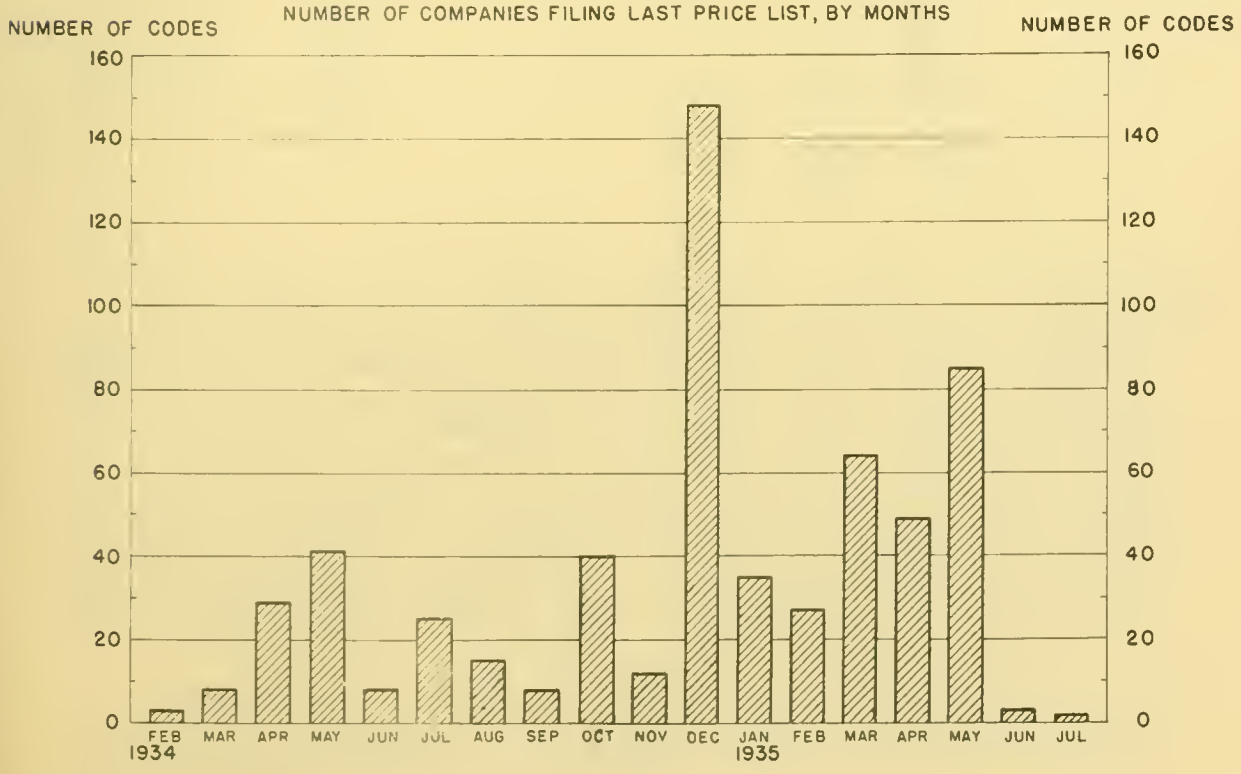
1934	First Price List Filed	Last Price List Filed	Number of Companies Only One Price List
Feb.	287	3	72
Mar.	143	8	84
Apr.	43	29	26
May	76	41	122
June	10	8	23
July	14	25	16
Aug.	11	15	6
Sep.	9	8	6
Oct.	3	40	15
Nov.	2	12	8
Dec.	5	148	11
1935			
Jan.	0	35	10
Feb.	1	27	2
Mar.	1	64	0
Apr.	0	49	3
May	1	85	
June	0	3	
July		2	
Undated			15
Total	606	602	419

9792

NUMBER OF COMPANIES FILING PRICE LISTS IN THE COFFEE INDUSTRY

FEBRUARY, 1934 – JULY, 1935





SOURCE: PRICE FILES OF THE NATIONAL COFFEE CODE AUTHORITY

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The same material is presented graphically in Chart I. It is to be noted that many companies suspended price filing after it had been in operation only a few months, and that the number filing declined rapidly from December 1934 on. The interval covered by price filing is given in Table VII. Of the 608 companies which filed two or more price lists, 184 submitted price lists during a period of ten months or longer.

TABLE VII

Number of Months Between First and Last Filing	Number of Companies
1/2	12
1	30
2	40
3	28
4	12
5	27
6	28
7	45
8	36
9	47
10	87
11	32
12	33
13	55
14	45
15	48
16	--
17	3
	Total 608

Price filing in the coffee industry was fragmentary. This was due largely to the fact that there are many small firms in the industry and because little cooperation was obtained in enforcing this provision. Table VIII shows the relationship between size of firm and number of price lists filed, and indicates that price filing was fairly regular on the part of the larger companies. The positive relationship between size of firm and number of lists cannot be expected to continue beyond the point at which ten or more lists were filed. Owing to variations in pricing policy, it is possible that companies filing only ten price lists were actually recording all of their price changes. Others may have changed their lists fifty times or more during the code period.

Substantial gaps in the completeness with which terms of sale were stated and the character of the list specified are suggested by the summary shown in Table IX. The information afforded by the tabulation on which this is based is not precise:

TABLE VIII

COFFEE INDUSTRY

Number of Price Lists Filed During Code Period, by Size of Firm.

No. of bags roasted annually																	
1,000,000 or more							1										
500,000 - 1,000,000								1								1	
250,000						1											
200,000		1															No. of Co's.
150,000																	
100,000				2		2			1								
75,000		1		4	1	1		2	3								
50,000			1	5	3		1				1	1			1		
25,000		2	5	7	6	3	4	1	1		1	1			1		
15,000		7	8	11	7		2	4		1						1	
10,000	2	1	15	7	11	1		2	2	1	1						
5,000	1	14	17	24	10	3	3	4		1							
2,500-5,000	2	32	51	41	9	9	1		1								
Less than 2,500	8	241	162	59	13		1	1								1	
Not stated		100	48	14	6		1										
No. of Price Lists Filed	0	1	2-4	5-9	10	15	20	25	30	35	40	45	50	55	60	65-69	

SOURCE: File of price lists submitted during the code period, located at office of Associated Industries of America (New York)

TABLE IX

SUMMARY OF TABULATION SHOWING DISCOUNTS AND NATURE OF LIST FOR PRICE LISTS FILED UNDER THE COFFEE CODE

	Totals
Discounts specified in list:	
Cash discount	528
Quantity discount on packaged coffee	89
Quantity discount on bulk coffee	195
Freight allowance	85
Jobber's discount	96
Advertising or promotional allowance	7
Nature of list:	
List to retailers	497
List to jobbers	111
List to restaurant and hotel coffees	342
List of bulk coffees	724
List of straight coffees	528
List of Packed coffees	643
Price F.O.B.	61
Price Delivered	217

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companies may have been doing a business limited to certain varieties of product and types of customer and may have been offering only the indicated types of discount, or they may have neglected to show all the relevant items in their price lists. The Code Authority did not secure strict compliance with all these elements in the price filing provision.

B. Sale Below Cost and Destructive Price Cutting.

The prohibition of destructive price cutting was practically of no consequence in the conduct of the industry during the life of the code. Three important compliance actions, on sale below cost and destructive price cutting, were entered during the code period. Practically no attention was officially given to destructiveness of the prices under complaint. The following remarks will therefore be confined to the record regarding sale below cost.

The first of the three cases was that of Standard Brands, Inc. Shortly after the adoption of the cost formula, this company put into effect a price reduction on its advertised coffee. The cut was announced as lasting from April 9 to May 1, 1934 and was made in the face of a rising green coffee market. The defense was that the company's method of distribution, based on frequent deliveries, put it at a disadvantage in competition with companies which loaded their dealers in anticipation of a rising market. The increased price of Standard Brands' coffee resulted in either a squeeze on dealers' margins or a shelf differential with consequent consumers' disfavor. The defense contended that both green coffee cost and advertising expense should be averaged over long periods; that the use of an all-inclusive cost system was theoretically applicable only in an industry with uniformity in production and distribution methods and with no important fluctuations in volume; that standard replacement cost should be based on a period representing "normal inventory of an average unit"; that the use of replacement cost hurt small enterprise in a declining market; that general and selling expense not specifically allocated by product represented 83% of these items in the company's accounts, and the allocation to coffee based on dollar sales did not "even approximate the facts"; and that, in general, "such wide variables as selling expense, advertising and general expense" should be excluded from the cost formula.

As has been noted above, no comprehensive factual information was available for a determination of "normal inventory of an average unit". The sufferings of "small enterprise in a declining market" are an admission of the fact that there is an enormous range among the members of the industry in inventories carried. The same small enterprises would, of course, be severely hurt in competition with price cuts by a powerful competitor in the face of an advancing or even under conditions of a stable green coffee market. The extent to which general expenses remain unallocated after costs attributable to individual products had been so charged, does not destroy the propriety of adopting accounting practices of further allocation according to dollar sales. Any facts supporting the statement that this practice was unjustifiable, would be in themselves, material for a specific allocation to product. Wide varation in selling and advertising costs is not necessarily a substantial argument against their inclusion. The reasons for their inclusion have been considered previously in the present report. Inequities, resulting from applying a short period replacement cost determination in an industry with sharp diversity of distribution methods, merit further consideration and might well have been reviewed in connection with problems involving the distrubution codes if the NRA had continued.

The National Compliance Council found Standard Brands guilty of sale below cost and the company agreed not to repeat the offense. However, the decision was reached in the summer of 1934. In fact the price complaints had all been withdrawn in accordance with the Company's announced schedule. Furthermore, a change in the green coffee market at the time the decision was made probably rendered a repetition of the cut unlikely for business reasons. The fact that the code authority was able to report to its members that it had successfully established violation of the provision forbidding sale below cost, in an action against a very important company, probably had a beneficial psychological effect on code enforcement.

Price cutting by the Wilkins Company of Washington D.C., occasioned a considerable amount of difficulty in the trade while it was going on but was straightened out by the code authority without recourse to official proceedings before the Administration. The charge was violation of the provision prohibiting sale below cost. At a regional code hearing held in Washington in December of 1934 the costs of the company on its mail order business, in which the price cutting had been done, were examined, but the cost accounting was not very detailed. The shrinkage cost of the Company was lower than the"normal" estimated by the Code Authority, and its selling costs on mail business were low. In defense against alleged violation, actual costs were the only figures considered: "normal" costs were merely a rule of thumb aid in spotting possible violators. When it was definitely established that the prices under complaint were actually below cost, the Wilkins Company agreed to withdraw them.

The third important case involving sale below cost involved a much longer and more acrimonious interchange. Price cutting on low grade coffee on the part of the H. P. Company, a mail order house selling out of St. Louis, during the summer of 1934, resulted in numerous complaints to the Code Authority. Prolonged arguments at the regional office yielded no results and the case was transferred to Washington on October 1. The Research and Planning Division Report dated December 10, 1934, recommended further consideration of replacement cost, raised the question as to the equity of allocation of general cost on the basis of dollar sales, and remarked that the maximum extent to which price had gone below cost was only 6/10ths of one cent, according to the testimony submitted. The first two were apparently mentioned because the H.-P. Company based its defense on the charge that replacement cost figures issued by the Code Authority failed very badly to represent the market, and on the contention that the indicated method of allocating general costs resulted in much too high an allocation to coffee. It should be remarked that "60 points" under cost on low-grade Rio coffee might easily be sufficient price inducement to take away the business of competitors.

The National Compliance Council adjudged the replacement costs to be reasonably close representations of the current market price of green coffee on the basis of trade journal quotations compiled by the NRA. It further declared the method of allocating general costs to be a recognized accounting procedure, acceptable generally to the coffee industry. It refused to reopen the question of the propriety of using replacement cost, on the grounds that to do so lay entirely outside the assigned function of the Council. The ruling of the Council accordingly held the H.-P. Company guilty of sale below cost on its low-priced coffee, and held that

the Company had failed to show that its prices were established to meet competition. It was also held that the complainants had failed to show destructive price cutting. The H.-P. Company refused to withdraw the prices under complaint, and was accordingly ordered to return its Blue Eagle on December 28. The case was turned over to the Litigation Division on January 3, 1935. It reposed there until the Schechter Decision automatically terminated all NRA litigation.

It is quite possible that by the end of 1934 the removal of the Blue Eagle was no longer regarded as a serious loss by many concerns. The failure to secure any punitive action through litigation in the course of the ensuing months simply served to strengthen the growing feeling in the industry that actual enforcement was not to be expected.

C. Misbranding.

A case involving violation of the code provision on labelling is of interest as furnishing additional background on procedure. On September 5, 1934, the Coffee Code Authority entered a complaint against the New England Tea and Coffee Company of Hartford, Connecticut, for selling a mixture of coffee, cereal and chicory without indicating on the package that the product included chicory and cereal. The governing code provision required a statement on each package that the coffee was mixed with chicory, and also a statement of the percentage of cereal in the mixture. The Company's Blue Eagle was removed and the case turned over to Litigation Division on December 6, 1934. This case was regarded in the NRA as a good one to bring before the Federal Trade Commission. Affidavits of purchase of the respondent's coffee in retail stores in Massachusetts had been secured in the course of the preliminary investigation. Motion was received by the Federal Trade Commission on January 31, 1935 and notice served February 26, of a hearing March 22. This was deferred, and on April 3, 1935 the Federal Trade Commission issued its order dismissing the motion, on the ground that the Commission had no jurisdiction since interstate commerce was not involved. Authority cited was Ward Baking Company v. Federal Trade Commission, 364 Fed. 330, in which the Circuit Court of Appeals held that sending goods across state lines, in charge of drivers did not constitute interstate commerce. The circumstances of the well-known case were paralleled in the case up for hearing, in so far as interstate commerce was concerned.

D. Inter-code Relationships.

The operation of integrated units in the coffee industry brought the Code Authority into a difficult position with regard to relations with distributing codes. The right of the coffee industry members to sell below cost in meeting competition raised the problems involved of deciding what was competition. Permitting a coffee roaster to meet the price of another roaster on a comparable grade and pack of coffee, both sales being made in the same quantity and to the same type of customer, is a clearcut situation. Altering any one of the conditions stated in the preceding sentence introduces difficulties. Precise knowledge of the price structure of the industry would be required to decide whether the price of a low-grade coffee could be cut to meet a drop in price of a quality blend, or of a better-back--and how much of a cut is justified by the change in differential.

Price differences for grade and container may be expected to vary with the level of the prices involved.

Again, it is not easy to decide how much, if at all, a company selling to jobbers may cut its price in response to a downward shift in price charged to retailers or consumers by a competitor. The price to retailers would be governed by the coffee code, the price to consumers ordinarily would not. Strictly retailing operations were governed by the retailing code. The Coffee Code actually permitted coffee roasters distributing through intermediaries to meet only the accounting figures at which roasted coffee was charged out to warehouse or retail stores in competing with chain store roasters. The retailing code restricted price cutting only to the extent of requiring a minimum mark-up of 6% on net invoice or replacement cost.

While the coffee code could enforce a charge-out figure covering actual costs to the time the roasted coffee is packed at the roasting plant, its cost computation could be evaded beyond that point. If cost of calling for unground coffee packed in drums at the roasting plant were charged to the retail store, it came within the flat mark-up area. In the later days of code operation the Retail Trade Code was amended to require the inclusion of transportation in retail costs, if incurred by the retailer. Compliance with this amendment appears to have been negligible. Taking the coffee out of the drums, grinding it and packing it in bags or slip-top cans could all be labelled as retail costs; the retail markup could still be only 6%. It is well known that some chains charged at least the grinding and the cost of the final container to the retail store. The demand for permission to meet a competitor's shelf price is therefore readily understandable. Attempts at joint consideration of this problem by the coffee, wholesaling and retailing Code Authorities were made in the latter part of the code period, but were unsuccessful.

E. Summary of Effects of Code Operation

During the first year of its operation, the Coffee Code appears to have been observed by the great majority of the industry's members. Compliance was maintained chiefly on a voluntary basis. The undesirability of becoming involved in long drawn out NRA proceedings may have acted as a deterrent of price slashing by the large chains. These were certainly in a position to bring about a serious breakdown in the Coffee Code because of their integrated operation. Their advantage in this respect consisted in the nature of price control in the retailing codes and in the fact that a retailing operation makes it possible to use widely different mark-ups on individual products. The mark-ups used may differ even more than actual difference in handling costs for the separate products. A chain store could secure a net profit upon retail sales even with cut prices on coffee, because of the increase in store income resulting from business attracted by coffee as a price leader. While drastic price cuts on coffee may not have been the ordinary policy of the chain stores under prosperous business conditions, they may have been tempted to make such cuts during the period of code operation. They were very quick to meet competitive price cuts. Whether or not the latter constituted permissible prices in the latter stages of code operation became a matter of minor importance. During the first year of the code, members of the industry appeared to be willing to wait on an investigation by the code authority as to whether or not a competitive price was legal.

A difference should be recognized between procedure appropriate to operating under permanent regulation of fair trade practices, and under emergency regulation. In the former, long delays in administrative decision due to the time requirements of exhaustive factual analysis, may well be justified by the results obtained. A temporary set-up requires prompt decision based on the best possible judgment that can be formed with materials and exhibits readily available. An administrative procedure which incurs the delays of the former to achieve the results of the latter does not make for effective regulation of industry.

The code itself inadequately treated the problems involved in defining competition. Among these problems was the difficult one of relations with codes governing wholesaling and retailing. During its period of comparatively successful functioning, the code for the coffee industry did curtail the drastic price cutting involving sale below cost prevalent in the pre-code period.

Retail coffee prices published by the Bureau of Labor Statistics show an increase in 1934, of approximately 1% over 1933, and a steady decline beginning January 1935. These figures are very rough. Practically speaking, no figures are available, for this report, on the trends in margins and selling prices just prior to, during, and after code operation. In personal interview with the heads of three medium-sized coffee companies which may be taken as representing a fairly large number of concerns similarly situated, all three were highly favorable to the code and the code authority.

One of these companies (Company A) does a volume of 50,000 to 75,000 bags annually and sells upon a semi-national basis. The second, (Company B) does a sectional business of approximately the same total volume. The third, (Company C) is an important local company roasting between 25,000 and 50,000 bags. Each of these three was hurt by the abandonment of the code. Price cutting on low grade coffees is now very severe. Company A is now attempting to persuade a number of its retail outlets to enter exclusive buying arrangements. The president of the company feels confident that putting the business on a requisitioning basis will enable the wholesaler-retailer type of distribution to match the efficiency of chain stores and possibly to surpass it. He said that a considerable part of the company's business had been handled on as low a margin as 2% when the volume was normal. Company B has just embarked on a venture in resale price maintenance on sales of its branded coffee in New York City using the contracts permitted under the New York State Fair Trade Law. Although this policy had been under consideration for some time, the undertaking was considerably hastened because of the severe price cutting of the post-code period.

Representatives of two very large firms in the industry expressed satisfaction with the abandonment of codes. They regarded it as relieving them of serious additional complications in doing business and felt that the code set up was impracticable, at least as far as its actual operation was concerned. Failure of the code to define "meeting competition" in precise terms was regarded as a serious obstacle to equitable code regulation.

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION
THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon C. Marshall, Director of the Division of Review.

The study sections set up in the Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority. the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No 18, Contents of Code Histries, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the code, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, these materials are fully described).

Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Economic Survey of
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
- Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
- Part B - Section 3 (e) of NIRA and its administration.
- Part C - Imports and Importing under NRA Codes.
- Part D - Exports and Exporting under NRA Codes.

Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Labor Income by Months, 1929-35
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
Women's Neckwear and Scarf Industry, Financial and Labor Data on

Women's Apparel Industry, Some Aspects of the

Trade Practice Studies

Commodities, Information Concerning: A Study of NRA and Related Experiences in Control
Distribution, Manufacturers' Control of: Trade Practice Provisions in Selected NRA Codes
Distributive Relations in the Asbestos Industry
Design Piracy: The Problem and Its Treatment Under NRA Codes
Electrical Mfg. Industry: Price Filing Study
Fertilizer Industry: Price Filing Study
Geographical Price Relations Under Codes of Fair Competition, Control of
Minimum Price Regulation Under Codes of Fair Competition
Multiple Basing Point System in the Lime Industry: Operation of the
Price Control in the Coffee Industry
Price Filing Under NRA Codes
Production Control in the Ice Industry
Production Control, Case Studies in
Resale Price Maintenance Legislation in the United States
Retail Price Cutting, Restriction of, with special Emphasis on The Drug Industry.
Trade Practice Rules of The Federal Trade Commission (1914-1936): A classification for comparison with Trade Practice Provisions of NRA Codes.

Labor Studies

Cap and Cloth Hat Industry, Commission Report on Wage Differentials in
Earnings in Selected Manufacturing Industries, by States, 1933-35
Employment, Payrolls, Hours, and Wages in 115 Selected Code Industries 1933-35
Fur Manufacturing, Commission Report on Wages and Hours in
Hours and Wages in American Industry
Labor Program Under the National Industrial Recovery Act, The
Part A. Introduction
Part B. Control of Hours and Reemployment
Part C. Control of Wages
Part D. Control of Other Conditions of Employment
Part E. Section 7(a) of the Recovery Act
Materials in the Field of Industrial Relations
PRA Census of Employment, June, October, 1933
Puerto Rico Needlework, Homeworkers Survey

Administrative Studies

Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Conditional Orders of Approval
Administrative Interpretations of NRA Codes
Administrative Law and Procedure under the NIRA
Agreements Under Sections 4(a) and 7(b) of the NIRA
Approve Codes in Industry Groups, Classification of
Basic Code, the -- (Administrative Order X-61)
Code Authorities and Their Part in the Administration of the NIRA
Part A. Introduction
Part B. Nature, Composition and Organization of Code Authorities

Part C. Activities of the Code Authorities
Part D. Code Authority Finances
Part E. Summary and Evaluation
Code Compliance Activities of the NRA
Code Making Program of the NRA in the Territories, The
Code Provisions and Related Subjects, Policy Statements Concerning
Content of NIRA Administrative Legislation
Part A. Executive and Administrative Orders
Part B. Labor Provisions in the Codes
Part C. Trade Practice Provisions in the Codes
Part D. Administrative Provisions in the Codes
Part E. Agreements under Sections 4(a) and 7(b)
Part F. A Type Case: The Cotton Textile Code
Labels Under NRA, A Study of
Model Code and Model Provisions for Codes, Development of
National Recovery Administration, The: A Review of its Organization and Activities
NRA Insignia
President's Reemployment Agreement, The
President's Reemployment Agreement, Substitutions in Connection with the
Prison Labor Problem under NRA and the Prison Compact, The
Problems of Administration in the Overlapping of Code Definitions of Industries and Trades, Multiple Code Coverage, Classifying Individual Members of Industries and Trades
Relationship of NRA to Government Contracts and Contracts Involving the Use of Government Funds
Relationship of NRA with States and Municipalities
Sheltered Workshops Under NRA
Uncodified Industries: A Study of Factors Limiting the Code Making Program

Legal Studies

Anti-Trust Laws and Unfair Competition
Collective Bargaining Agreements, the Right of Individual Employees to Enforce
Commerce Clause, Federal Regulation of the Employer-Employee Relationship Under the
Delegation of Power, Certain Phases of the Principle of, with Reference to Federal Industrial Regulatory Legislation
Enforcement, Extra-Judicial Methods of
Federal Regulation through the Joint Employment of the Power of Taxation and the Spending Power
Government Contract Provisions as a Means of Establishing Proper Economic Standards, Legal Memorandum on Possibility of
Industrial Relations in Australia, Regulation of
Intrastate Activities Which so Affect Interstate Commerce as to Bring them Under the Commerce Clause, Cases on
Legislative Possibilities of the State Constitutions
Post Office and Post Road Power -- Can it be Used as a Means of Federal Industrial Regulation?
State Recovery Legislation in Aid of Federal Recovery Legislation History and Analysis
Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
Trade Practices and the Anti-Trust Laws
Treaty Making Power of the United States
War Power, Can it be Used as a Means of Federal Regulation of Child Labor?

9768--4.

THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of those studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, Payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
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Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry
Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry

THE COVERAGE

The original, and approved, plan of the Division of Review contemplated resources sufficient (a) to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure much aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 25% more studies than are listed above, and (g) to prepare a comprehensive summary report.

Because of reductions made in personnel and in use of outside experts, limitation of access to field work and research agencies, and lack of jurisdiction over files, the projected plan was necessarily curtailed. The most serious curtailments were the omission of the comprehensive summary report; the dropping of certain studies and the reduction in the coverage of other studies; and the abandonment of the consolidation and indexing of the files. Fortunately, there is reason to hope that the files may yet be cared for under other auspices.

Notwithstanding these limitations, if the files are ultimately consolidated and indexed the exploration of the NRA materials will have been sufficient to make them accessible and highly useful. They constitute the largest and richest single body of information concerning the problems and operations of industry ever assembled in any nation.

L. C. Marshall,
Director, Division of Review.

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